UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE

ASSOCIATED CATHOLIC CHARITIES, INC.[1]
Employer

and Case 5-RC-15483

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 500, AFL-CIO, CLC
Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue in this proceeding is whether the Board should, in the exercise of its discretion, decline to exert jurisdiction over the Employer.

The Employer is a Maryland not-for-profit corporation engaged in operating various social service programs within the State of Maryland. On October 21, 2002, the Petitioner filed this petition pursuant to Section 9(c) of the National Labor Relations Act, seeking to represent a unit of all nonprofessional, nonsupervisory employees at the St. Veronica Head Start program in Baltimore, Maryland.

The St. Veronica Head Start program is a federally funded family development program serving children and adults from low-income families. The program enables children to be better prepared for kindergarten, thereby improving the likelihood of success in their academic careers. The Employer operates the St. Veronica Head Start program pursuant to a multi-million dollar contract ("the contract") between the Employer and the City of Baltimore. The City is the grantee from the Federal government of the funding for the operation of various Head Start programs. The City, in turn, has contracted with a number of delegate agencies to operate Head Start programs within the City. By the contract, the City has delegated to the Employer responsibility for operating three Head Start programs within the City, including the one at issue.

The parties stipulated that the only issue raised for decision in this proceeding is whether the Board has jurisdiction over the Employer based solely on the extent to which the Employer is capable of engaging in meaningful collective bargaining due to the extent of control afforded to the City of Baltimore by the contract. In this regard, the parties specifically stipulated that the Employer is not exempt from the Board's jurisdiction as either a political subdivision or a religious organization.

---

[1] The name of the Employer appears as amended at the hearing.

The Employer asserts that the Federal government, through the City of Baltimore, maintains such pervasive control over the Employer and, more particularly, the employees' terms and conditions of employment, that the Employer would be unable to engage in meaningful collective bargaining should the Petitioner be certified. Therefore, the Employer argues, the Board should decline to assert jurisdiction. In so arguing, the Employer urges the Board to return to the precedent of *Res-Care, Inc.,* 280 NLRB 670 (1986), and its progeny.

The Petitioner contends that the Board has asserted jurisdiction over employers similar to the Employer herein, notwithstanding that various contracts or community block grants set forth various required conditions of employment, and that jurisdiction is properly asserted over the Employer in this proceeding, citing *Management Training Corp.,* 317 NLRB 1355 (1995), which overruled *Res-Care; FiveCAP, Inc.,* 331 NLRB 1165 (2000); and *Enrichment Services Program, Inc.,* 325 NLRB 818 (1998).

In support of its contention that it would be unable to engage in meaningful bargaining with the Petitioner, the Employer presented an offer of proof that it would, if permitted to do so, introduce evidence to establish that in addition to describing the responsibility of the Employer to provide Head Start services to 369 children and their families in Baltimore City, under the contract the City imposes other requirements upon the Employer, including:

1. The Employer must maintain and abide by its written personnel policies, which must be approved by the City.

2. The City has the right to be involved in any policy-making decisions with regard to the Head Start program.

3. The City requires the Employer to abide by certain wage and salary scales affecting employees in the agreed-upon unit,[2] including provisions relating to longevity increases and seniority credits for service in other Head Start programs.

4. The Employer may not use any Head Start monies to pay salaries different from those set forth in the mandated salary scales.

[2] Among the documentary evidence introduced by the Employer as part of its offer of proof is a letter dated February 25, 2002, from the City, entitled "Fiscal Review." The Review reminds the Employer that the City requires that Head Start employees' hourly rates and benefits be reviewed and approved by the City, and that Head Start delegates (such as the Employer) are required to abide by the approved salary structure and grade levels. The Review further observed that the Employer paid one employee in excess of scale, and recommended the Employer either reduce the employee's wage to the scale amount or request a waiver from the City's Head Start Coordinator.

5. The Employer must follow the federally-mandated "Head Start Program Performance Standards and Other Regulations" as set forth in 45 C.F.R. Parts 1301 et. seq.

6. The City requires all delegate agencies that provide Head Start services to use a specified set of job descriptions.

7. The City requires (and pays for) various training for the Employer's Head Start employees.

In *Management Training Corp.*, the Board reexamined its holding in *Res-Care* and decided that the test set forth in that case for determining whether to assert jurisdiction over an employer with close ties to a government entity, i.e., to determine if the employer retains sufficient control over employees' essential terms and conditions of employment to enable it to engage in meaningful collective bargaining, was "unworkable and unrealistic." *Management Training*, 317 NLRB at 1355. Henceforth, the Board announced, it would determine whether to assert jurisdiction only by considering "whether the employer meets the definition of 'employer' under Section 2(2) of the Act, and whether such employer meets the applicable monetary jurisdictional standards." *Id.* at 1358 (footnote omitted).

Applying *Management Training* to the facts of the instant case, it is undisputed that the Employer both meets the definition of "employer" in Section 2(2) of the Act and satisfies the Board's applicable monetary jurisdictional standard. Accordingly, I find that Board jurisdiction is properly asserted over the Employer.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner, Service Employees International Union Local 500, AFL-CIO, CLC, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. Associated Catholic Charities, Inc. is a Maryland not-for-profit corporation engaged in operating a Head Start educational program with an office and place of business in Baltimore, Maryland. During the preceding 12 months, a representative period, the Employer derived gross revenue, excluding contributions which because of limitations by the grantor are not available for operating expenses, in excess of $1,000,000. During the same period, the Employer purchased and received at its Baltimore facility goods and materials valued in excess of $5,000 directly from points outside the State of Maryland.

6. The parties stipulated, and I find, the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:[3]

> All full-time and regular part-time teachers, assistant teachers, family service coordinators, drivers, food service workers, custodians, and secretaries employed by the Employer in its St. Veronica's Head Start Program in Baltimore, Maryland, but excluding all directors, site directors, managers, education coordinators, confidential employees, guards and supervisors as defined in the Act including family service coordinator supervisors.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 500, AFL-CIO, CLC**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit

[3] The parties stipulated that none of the employees in the agreed-upon unit are professional employees as that term is defined by the Board.

employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **NOVEMBER 20, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995).

Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **NOVEMBER 27, 2002**. The request may not be filed by facsimile.

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5

Dated: NOVEMBER 13, 2002

260-3395